

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING,
INC.,

Plaintiff,

v.

TOTAL MERCHANT SERVICES, LLC,
Defendant.

Case No. [19-cv-05711-EMC](#)

**ORDER REQUESTING INFORMATION
FROM THE PARTIES**

Docket No. 87

Before the Court will approve the parties' Notice of Voluntary Dismissal of Action With Prejudice as to Plaintiff and Without Prejudice as to the Putative Class, Docket No. 87, the Court requests information from the parties about the scope and nature of the publicity associated with this putative class action. As Federal Rule of Civil Procedure 23(e) compels: "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." This requirement "is to protect the interests of absent plaintiffs before permitting dismissal." *Schultzen v. Woodbury Cent. Cmty. Sch. Dist.*, 217 F.R.D. 469, 470 (N.D. Iowa 2003). Although "the class has not been certified . . . [t]his requirement [to act as the guardian of the rights of class members still] applies." *Id.* (citing *Diaz v. Trust Territory of Pacific Islands*, 876 F.2d 1401, 1407 (9th Cir. 1989)); *see also Tomblin v. Wells Fargo Bank, N.A.*, No. 13-CV-04567-JD, 2014 WL 5140048, at *2 (N.D. Cal. Oct. 10, 2014) (noting that "this Court will follow *Diaz*" to evaluate the proposed dismissal as "this approach is consistent with Rule 23(e) as it exists today"). Thus, in order to ensure that the interests of the absent plaintiffs are appropriately

safeguarded, and to safeguard against any misplaced reliance on this suit and any consequential tolling of the statute of limitations, the parties shall file by August 20, 2021, a description of the scope of publicity and nature of the information shared with the public and putative class members about this case.

IT IS SO ORDERED.

Dated: August 13, 2021



EDWARD M. CHEN
United States District Judge